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THOMAS J. SHEPHARD, SR.

*Please respond to
our Stockton office*

STOCKTON OFFICE:
509 WEST WEBER AVENUE
STOCKTON, CA 95203-3166
POST OFFICE BOX 20
STOCKTON, CA 95201-3020
(209) 948-8200
(209) 948-4910 FAX

June 29, 1998

MODESTO OFFICE:
611 THIRTEENTH STREET
MODESTO, CA 95354
(209) 577-8200
(209) 577-4910 FAX

Mr. Rick Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: SAN JOAQUIN COUNTY COMMENTS ON THE
CALFED BAY-DELTA PROGRAM PROGRAMMATIC EIS/EIR

Dear Mr. Breitenbach:

On behalf of San Joaquin County and the San Joaquin County Flood Control & Water Conservation District, which encompasses all of San Joaquin County and is governed by the County Board of Supervisors of San Joaquin County (together "County"), we submit the following comments on the CALFED Bay-Delta Program Draft Programmatic EIS/EIR. We believe that the EIS/EIR as prepared is inadequate for the purposes intended and therefore does not sufficiently comply with the requirements of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). The EIS/EIR fails to make available to the decision makers significant relative information needed to make a decision with respect to the pending matter.

1. Any CALFED program alternative will intimately affect San Joaquin County.

San Joaquin County is located at the northern end of the San Joaquin Valley, and covers approximately 921,600 acres, most of which is used for agricultural purposes. The County is bordered on the east by the Sierra Nevada foothills, and the western portion includes most of the Sacramento-San Joaquin Delta. The San Joaquin River flows south to north through the County, and the Mokelumne, Calaveras, and Stanislaus Rivers flow east to west through the County and into the Delta. The geographic and hydrologic characteristics of the eastern and western portions of the County are unique and strikingly different.

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On the west side one finds the Delta region. Of the 738,000 acres within the legal definition of the Delta, the County of San Joaquin embraces within its boundaries more than 300,000 acres of Delta lands which is the focus of the CALFED Program. This includes some of the most productive agricultural land in the State of California and also miles of waterways which abound in fish and other wildlife and which are used for recreational purposes by people from all areas of the State.

On the east side one finds a critically overdrafted groundwater basin. Although four rivers flow through the County, the County and its inhabitants have been forced to rely too heavily upon its groundwater supply to meet reasonable and beneficial water needs. The Eastern San Joaquin County Groundwater Basin (Groundwater Basin), which underlies more than half of the County, was identified as subject to critical conditions of overdraft by the Department of Water Resources (DWR). The effect of the critical conditions of overdraft has been declining groundwater levels and the intrusion into the Groundwater Basin of ancient deposits of brine underlying the Delta. This fundamental problem, the critically overdrafted groundwater basin underlying the County, must be addressed and considered in any CALFED alternative.

The County and others within the County have made repeated efforts to acquire additional supplies of surface water for the area in order to restore and protect the Groundwater Basin. However, these efforts have been consistently frustrated throughout the years by actions of the State Water Resources Control Board (State Board), its predecessors, the United States Bureau of Reclamation (Bureau), and others. This fundamental problem, the critically overdrafted groundwater basin underlying the County, must be addressed. In order to solve this problem, it is essential that the existing level of surface water supplies to the area continue and that additional surface water supplies are developed in order to reduce the dependency on groundwater.

The implementation of any CALFED alternative will greatly influence the County of San Joaquin due to its inclusion of so much of the Delta and the unique characteristics of the eastern and western portions of San Joaquin County.

2. The CALFED program Programmatic EIS/EIR fails to adequately consider the needs of eastern San Joaquin County. A solution to the overdrafted Eastern San Joaquin County Groundwater Basin is a matter, not only of concern to this County, but to the entire State of California, in view of the agricultural productivity of the area and the significant population residing within the area. The CALFED program should consider a specific component to address the needs of eastern San Joaquin County.

The Department of Water Resources defined the Eastern San Joaquin County Groundwater Basin as one that is subject to critical conditions of overdraft. The EIS/EIR must fairly and adequately describe and analyze this condition as affected by the alternatives presented in the EIS/EIR. The draft EIS/EIR fails to describe or consider this condition at all. A complete EIS/EIR must evaluate the significance of this condition to the area and the impacts on the lack of availability of groundwater supplies in San Joaquin County. Recent studies indicate approximately 70,000 acre-feet of additional water is needed to halt the flow of subsurface saline water into the Eastern San Joaquin County Groundwater Basin. The total additional water needed in the area to address the critical overdraft conditions of the Groundwater Basin is approximately 250,000 acre-feet per year.

The Eastern San Joaquin County Groundwater Study, prepared by Brown & Caldwell in October 1985, indicates that the basin has an average annual overdraft of 70,000 acre-feet. Page 1-6 of the 1985 Study explains the basis for this determination:

Over the course of the verification process, the hydrological balance for the groundwater basin was prepared for the 1963-1982 period. The balance consists of annual inventory of inflows and outflows to the basin. The balance is based on the study area boundaries and thus excludes the portion of the model area outside San Joaquin County.

Based on this balance, there has been a total net inflow from the system of nearly 1.5 million acre-feet over the 20 year verification period, from the 1963 to 1982 period. This represents an average annual outflow (or overdraft) during the selected period of about 70,000 acre-feet. This historic average net outflow does not represent the magnitude of future basin overdraft because this balance does not

account for all future basin depletions, such as increased M&I pumpage and increased basin exports to EBMUD and use by Calaveras County.

The 1996 American River Water Resources Investigation Planning Report and Draft Environmental Impact Report/Environmental Impact Statement, prepared by the U.S. Bureau of Reclamation, also identified a need for a minimum of 70,000 acre-feet per year as needed in the Groundwater Basin in order to halt the flow of subsurface saline water into the Eastern San Joaquin County Groundwater Basin. Halting the subsurface saline water inflow is critical to preserving the usability of the basin.

In order to restore the groundwater basin to a safe and economical operating level, the continued overdraft would have to be halted (requiring 70,000 acre-feet per year), as well as, additional water for restoration of the basin to a level at which it could be stabilized to meet the long-term needs of the residents of San Joaquin County. In the American River Water Resources Investigation Planning Report, in Technical Appendix, Volume 111, page 4 of the Technical Memorandum No. 9, it is reported that 129,500 acre-feet per year of supplemental water would be required to meet the year 2030 water demand and restore the groundwater basin to the 1990 levels of groundwater and to halt the overdraft. This need for 129,500 acre-feet per year of supplemental water is in addition to the 70,000 acre-feet of recharge water necessary to halt saline water movement into the basin.

In the analysis which led to the conclusion that 129,500 acre-feet of supplemental water per year is needed, it was assumed that the Bureau of Reclamation contract for Central Valley Project water for 49,000 acre-feet per year from the Stanislaus River would be available to the Central San Joaquin Water Conservation District (Central) through its contract with the U.S. Bureau of Reclamation. This delivery has never been effectuated at this level and the level of future delivery pursuant to this contract is uncertain; litigation is pending. Due to the reluctance of the Bureau to effectuate the deliveries to which Central is entitled, the amount of supplemental water needed to restore the Groundwater Basin, in fact, is even greater.

Thus, the total amount of water required in Eastern San Joaquin County is in excess of 250,000 acre-feet per year. This represents the total amount of supplemental water required to address the critical overdraft conditions of the Groundwater Basin. The EIS/EIR fails to state the effects specific to the area of eastern San Joaquin County, including the condition of groundwater overdraft and the continued saline intrusion into the Basin. This condition could have a major impact on San Joaquin County, and it is not discussed in the EIS/EIR. The failure to properly present the condition of overdraft in the Groundwater Basin in eastern San Joaquin County and the impacts thereof makes the EIS/EIR inadequate for its purpose.

3. While the Draft EIS/EIR mentions the existing Watershed and Delta Protection Acts and Area of Origin Laws, it fails to meaningfully consider the application of these Laws to the alternatives proposed.

When the legislature enacted the Central Valley Project, it established laws to protect the commitment at that time to northern California water users that our water supply would not be depleted for the sake of exporting to southern California. The law states, "a watershed or area wherein water originates, shall not be deprived directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein." California Water Code §11460. Unfortunately, the CALFED alternatives as drafted, do not meaningfully consider the application of these laws to the area and watersheds of origin.

The Phase II Interim Report at Page 37 references the Area-of-Origin/Water Rights as statutes which protect the rights to water in watersheds where the water originates from uses outside these watersheds. The Report continues that "CALFED supports this concept and will develop its Program consistent with the laws and regulations protecting areas of origin." San Joaquin County encourages the CALFED program to do more than merely support, but to implement these controlling principles of California water law. State law requires that the uses within the Delta and other areas, and watersheds of origin, must be accorded priority over exports.

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The Watershed Protection Act requires protection of County water supply. The Watershed Protection Statute, beginning at California Water Code Section 11460, provides protection to the inhabitants and users of the County. The EIS/EIR fails to recognize this right to preferential services. Section 11460, Prior Right to Watershed Water, states in full:

In the construction and operation by the [Department of Water Resources] of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can be conveniently supplied with water therefrom, shall not be deprived by the department directly, or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

To come within the protection of Water Code Section 11460, the County must be an area wherein water originates or an area immediately adjacent to such area, which can be conveniently supplied with water from such area. Both the actual Delta area and the Eastern San Joaquin County Groundwater Basin satisfy that criteria. The County meets these criteria due to its proximity to both the Sacramento River Watershed and the San Joaquin River Watershed. The County is either part of each of these watersheds or immediately adjacent to each of these watersheds or both.

Further evidence of the Legislature's intent to provide protection to the watersheds where water originates can be found in Water Code Section 232, which states in part:

The Legislature finds and declares that in providing for the full development and utilization of the water resources of this state it is necessary to obtain for consideration by the Legislature and the people, information as to the water which can be made available for exportation from the watersheds in which it originates without depriving those watersheds of water necessary for beneficial uses therein.

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The EIS/EIR and the implementation of the alternatives must take into consideration the clear intent of the Legislature in enacting the Watershed Protection Statute and related provisions, and fulfill the water needs of the County before exporting water to outside users. Historically this has not occurred. California Water Code Section 11460 requires that water from exports by way of the State Water Project (SWP) and Central Valley Project (CVP) Delta pumps be used to meet the burdens of the San Joaquin River and Delta fishery and water quality requirements which are currently being met by fresh water releases from New Melones Reservoir. The EIS/EIR is insufficient as it does not consider alternatives consistent with this requirement of State law, a requirement which must be met.

The Delta Protection Act requires protection of County water supply. The Delta Protection Statute requires protection of County water supply. The provisions of the California Water Code which provide special legislative protection to the Delta, beginning at Section 12201, provide specific protection to the users and future users of the County. Water Code 12204 states in full:

In determining the availability of water for export from the Sacramento-San Joaquin Delta, no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.

Section 12202 specifically provides the Board with the duty to provide an adequate water supply for Delta users and for salinity control. Section 12202 states in full:

Among the functions to be provided by the State Water Resources Development System in coordination with the activities of the United State and providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu

of that which would be provided as a result of salinity control, no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.

Section 12203 states in full:

It is hereby declared to be the policy of the state that no person, corporation or public or private agency of the state or the United States should deliver water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.

By the definition of the boundaries of the Delta found in Section 12220, in addition to the Delta proper, a portion of the Groundwater Basin area is within the statutorily defined Delta. Section 12203 and 12204 therefore require that those users within the Delta are entitled to the water of the Delta before any other diversions, including exports. The EIS/EIR fails to consider CALFED alternatives consistent with the language of the Delta Protection Statute. The exports from the Delta by the CVP are legally restricted to water which is "surplus" to the needs of beneficial uses therein.

In implementing the CALFED Program, alternatives must give full consideration to the language of these statutes and may not take any action contrary to these or other authorities that will harm existing users in the County and further harm the opportunity of the County to obtain supplemental surface water supplies to relieve the overdrafted Groundwater Basin. Setting forth alternatives which do not recognize applicable California law is not only inadequate but is a disservice to the decision makers who will use the EIS/EIR.

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4. The Draft EIS/EIR fails to adequately explore surface water storage alternatives. The EIS/EIR fails in that there is not sufficient water to meet the expanding urban and agricultural water needs of the State during the planning period considered in the Draft EIS/EIR.

There has been no commitment by CALFED that additional storage facilities will be included and critically evaluated. It is essential to the preservation of the Delta that additional storage supplies are developed in order that a reliable and affordable source of water is available to serve and protect the existing and the future urban and agricultural water quality and quantity demands. In addition, it is essential that additional surface water supplies be developed for use in San Joaquin County in order to reduce the dependency on groundwater in the eastern portion of the County. The failure to consider meaningful storage, other than limited groundwater storage, is a serious inadequacy in view of the documented and growing shortage of water in California.

5. The CALFED approach that the development of new storage is viewed by the financing component of the Phase II Interim Plan as a cost practically to be borne by water users in the upstream areas while the fixing of damage caused by the Export Project is not an allocated benefit and places an unfair burden on the very areas entitled to the Area of Origin/Watershed Protection provision of California law.

It is essential that storage facilities are included in the CALFED alternative and the current approach to financing such storage proposals is unacceptable as it fails to consider the historic use and financing of the Export Projects who have benefited from state and federal funding. It is unfair that now that the areas of origin require additional water supplies, the financing burden is to be borne by areas of origin alone.

6. The EIS/EIR fails to consider feasible alternatives to address the State water supply shortage such as the desalinization of sea water or brackish water.

The EIS/EIR should meaningfully consider feasible alternatives which could be implemented in the CALFED program. As water shortage is a continuing problem in the State and is impacting the health and viability of

the Delta, the CALFED program should consider alternatives which would supplement the availability of water for beneficial use. Each hydrographic region of California should, to a much greater extent, stand on its own rather than depriving other areas, such as our own, of water that they need. The desalinization of sea water or of brackish water are alternatives which should be considered.

7. The Draft EIS/EIR fails to consider the economic impacts of the CALFED proposals. Among other things, the impacts of not meeting the needs of Eastern San Joaquin County for water and the deprivation of other areas of San Joaquin County of water that has previously been available are not considered. Nor are the statewide economic effects of the alternative proposals adequately considered.

According to the County's Agricultural Commissioner's 1997 Annual Crop Report, the estimated gross valuation of agricultural production for 1997 in the County was almost 1.5 billion dollars (\$1,487,475,800.). The County is proud to be one of the leaders in the state in agricultural production and revenue. In San Joaquin County, more than 30% of all jobs rely on agriculture and its related industries. Any economic impacts due to deprivation of water to agricultural users or due to land retirement mandates must be fully analyzed and documented in order to be purposeful. The impacts of the alternatives will have substantial economic impacts on San Joaquin County, which has not been addressed in the EIS/EIR.

8. The Draft EIS/EIR anticipates significant conversion of Delta lands to non-agricultural use; however, the economic impacts to the individuals involved and to the San Joaquin County economy are not adequately evaluated. These impacts would be very significant.

The Phase II Interim report at page 40 discussing agricultural land conversion in the Delta indicates that approximately 140,000 to 200,000 acres of land would be retired which is currently involved in agricultural production. Currently more than 520,000 acres are farmed in the Delta which includes 738,000 acres in its entirety. (Delta Statistics, Phase II Interim Report, Page 13.) This agricultural land retirement mandate requires as much as 28% of the entire Delta to be converted from its current use to a new use consistent with CALFED. This mandate would affect up to 38

percent of the land which is currently in agricultural production in the Delta. These impacts should not be taken lightly. This proposal will have significant impacts on the County, on agriculture and on the economy of the State.

9. The County is unalterable opposed to any isolated facility transporting water from the Sacramento River directly to the State and Federal export pumps. The actual impacts of Alternative Three must be critically evaluated in the EIS/EIR.

Beginning in 1969, the Board of Supervisors of San Joaquin County, expressed their opposition to an isolated facility which would transport water around the Delta, rather than through the Delta. At that time it was called the Peripheral Canal, today it is Alternative Three of the CALFED Draft EIS/EIR. At that time the County requested assurances that an adequate and dependable supply of water of suitable quality will be maintained at all times in the Delta by the State and federal governments. The inability to make such assurances today, continues to cause concern by San Joaquin County to any isolated facility proposal. In fact, the present proposal poses an even greater threat to the Delta region than the earlier Peripheral Canal.

10. The Draft EIS/EIR continues to assume the use of large quantities of stored Stanislaus River water to dilute the quality of the San Joaquin River and to meet fishery requirements. This results in a violation of the Watershed Protection Statute and is unacceptable.

All the existing CALFED alternatives assume the continued use of Stanislaus River water as a primary source to meet the San Joaquin River flow requirements. It is legally indefensible to place the entire burden of meeting the Vernalis salinity objectives on the New Melones Reservoir by requiring fresh water releases to dilute the pollution caused from sources which bear no relation to the Stanislaus River. This deprives, San Joaquin County, an area protected by the Watershed Protection laws, of the reasonable use of such water, which is desperately needed on the east side of our County.

All alternatives assume the continued implementation of the Bay-Delta Plan Accord (Delta Accord) which mandates that water is to be released from New Melones Reservoir to meet the San Joaquin River flow

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requirements of the State Board May 1995 draft water quality control plan. The Bureau is meeting the San Joaquin River flow requirements of the State Board with water from the New Melones Project. The assumption that the implementation of the flow requirements consistent with the Accord arrangement perpetuates an agreement which is unreasonable, not supported by law, and should not be further implemented by the actions of the Federal government and the operations of the CVP.

The Delta Accord contains the "Dirty Deal" in which it was agreed that water from New Melones which was contracted to San Joaquin County interests within the "area of origin" rather than water from the exporters would be used to meet fish flow requirements in the San Joaquin River and Delta. Stanislaus River and Delta interests were not allowed to be apart of the process that resulted in that Deal. This Deal permits the majority of the yield of the New Melones Project to be exported at the Delta pumps. This EIS/EIR assumption, that the total amount of flows that the Bureau has committed to make for the Delta from the San Joaquin River will be provided from the New Melones Reservoir, perpetrates an unsupportable action which should not continue.

It is fundamentally unacceptable that all salinity alternatives assume that the salinity objectives at Vernalis are the responsibility of the Bureau and will be provided from New Melones Reservoir. It is legally indefensible to place the entire burden of meeting the Vernalis salinity objectives on the New Melones Reservoir by requiring fresh water releases. This action not only violates California Constitution Article X Section 2, but also violates sections 10505 et seq., 12220 et seq., and 12230 et seq. of the California Water Code. The Draft EIS/EIR is inadequate by failing to identify and discuss salinity alternatives consistent with these provisions of State Law.

Fundamental to California water law and policy is that the Central Valley Project and the State Water Project must mitigate the impacts associated with the construction and operation of their water projects. It is the responsibility of the CVP and the SWP to mitigate the impacts on water quality and flow which are caused by the projects. As scores of studies dating back to the 1970's have demonstrated, the primary source of the water quality problems in the San Joaquin River and the corresponding requirement for a salinity objective at Vernalis is from CVP deliveries to the west side of

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the Central Valley and the resulting agricultural and wetlands refuge drainage resulting from those deliveries. The primary method used to date, and considered by the EIS/EIR Alternatives, to remedy the poor water quality and to achieve water quality objective for salinity at Vernalis has been through fresh water releases from New Melones to dilute the pollution caused from these sources, which bear no relation to the Stanislaus River or the New Melones Reservoir. This should no longer be tolerated. The EIS/EIR is inadequate as it only evaluates alternatives which require fresh water releases from New Melones.

This use of high quality surface water from New Melones Reservoir to dilute pollution which has been dumped into the San Joaquin River is a violation of the requirement of the California Constitution Article X Section 2 that the waters of the state are placed to their highest beneficial use. Because the water is needed to dilute pollution, it is foregone from use for beneficial uses such as domestic, irrigation, fish and wildlife enhancement, or recharge of the critically overdrafted groundwater basin. The Bureau cannot continue to violate the law in this manner through its operation of the CVP to allow the use of the San Joaquin River as a toxic drain.

The projects which divert water from the Delta must by law bear the burden of meeting water quality objectives, the derogation of which they have caused. The operation of the projects thus deprives Eastern San Joaquin County, which is clearly a part of the area of origin protected by statute, of the water which Eastern San Joaquin County needs to meet its needs. Eastern San Joaquin County has not caused the present toxic condition of the San Joaquin River and yet it is asked to bear the burden of attempting to correct the problem. By failing to recognize applicable law as a constraint upon available alternatives, the EIS/EIR is inadequate. If it is necessary to use water for the dilution of the San Joaquin River, it can and should be water made available from those creating the water quality problem with the water shortage falling to the area which has created the problem.


11. Conclusion

The County realizes the enormous task which the federal government has undertaken in preparing an EIS/EIR for implementing the CALFED Bay-Delta Program. We look forward to actively participating and making the

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EIS/EIR into an adequate tool to inform the decision makers of the law and facts on which a decision must be based. It is not yet such a tool.

Very truly yours,



THOMAS J. SHEPHARD, SR.
San Joaquin County Special Water Counsel

TJS/DW:ect

cc: Each Member of the Board of Supervisors
John W. Pulver
Michael F. McGrew
DeeAnne Watkins

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R. Breitenbach
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Name **NICK BREITENBACH** Phone **916 / 653-5147**

Company **CALTEX NAT-DETA PROGRAM**

Address **1416 NINTH STREET, SUITE 1155**

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